

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/502,328 Confirmation No. 3294
Applicant : ZIMMERMAN *et al.*
Filing or § 371 date : 19 MAY 2005
TC/A.U. : 1609
Examiner : M. MOSHER
Docket No. : CS-118
Customer No. : 62,479

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
Alexandria, VA 22313-1450

Sir:

This is in response to the Official Action bearing a mail date of July 24, 2007. The one-month shortened statutory period for response is set to expire on August 24, 2007. Hence, the response is timely filed. In view of the following remarks, the Examiner is respectfully requested to withdraw the outstanding Restriction and Species Requirement.

SUMMARY OF RESTRICTION REQUIREMENT

The Office Action restricted pending claims 1-18 as follows:

Group I claim(s) 1-4, 6-10, 12-17, drawn to body-treating methods.

Group II claim(s) 5, 11, 18, drawn to analytical methods.

The Office Action further required an election of species if Group I is elected, for the peptides SEQ ID NO:1 to SEQ ID NO:28, and for the treated conditions of: Cancer, Autoimmune, Transplant, Infection by eukaryote (includes parasites), Allergy to eukaryote (includes parasites), Infection by prokaryote, Infection by virus or phage, Infection by prion, Allergy to prokaryote, Allergy to virus or phage, and Allergy to prion.

PROVISIONAL ELECTION

Group I (1-4, 6-10, 12-17, drawn to body-treating methods) is elected with traverse. Infection by virus or phage is elected as the "condition treated" species and SEQ ID NO.'s 7, 9 and 18, all being directed to derG is elected for peptides. Both species requirements are traversed. In the event the restriction is not overcome, the right to pursue the subject matter of the un-elected claims is retained. If the genus claim is found allowable, it is requested that the allowable subject matter be *sua sponte* added back into the application.

TRAVERSAL

The Restriction Requirement should be withdrawn because Groups I and II contain the same features. At the very least, Groups I and Group II should be examined together to the extent that the species election of the peptides SEQ ID NO.'s 7, 9 and 18, are all directed to derG, and are fully patentable over the cited Clayberger *et al.* reference ("Peptide Corresponding to the CD8 and CD4 Binding Domains of HLA Molecules Block T Lymphocyte Immune Responses In Vitro", Clayberger *et al.*, J. Immuno. 1994, 153:946).

Similarly, the species election of SEQ ID NO: 1 to SEQ ID NO: 28 and for the treated conditions of: Cancer, Autoimmune, Transplant, Infection by eukaryote (includes parasites), Allergy to eukaryote (includes parasites), Infection by prokaryote, Infection by virus or phage, Infection by prion, Allergy to prokaryote, Allergy to virus or phage, and Allergy to prion, should be withdrawn because none of the species contain mutually exclusive limitations. See MPEP §806.04(f).

Notably, the Restriction arbitrarily selected the species for the conditions without any regard for the manner in which they have been claimed or taught in the specification. Contrary to the Office Action's assertion that each of the species do not relate to a single general inventive concept under PCT rule 13.2, the analysis under the PCT rules do not apply to the species election but only to election of the invention.

The M.P.E.P. rules pertaining to species election as follows in § 803.02 states that where the provisionally elected species is free of the prior art, the claim must be either allowed as originally written or the search extended to the extent necessary to determine patentability of the alternatives species within the claim.

Moreover, no “serious burden” is placed on the Office by the election of the various disease conditions and SEQ ID NO.'S 1-28 because of the commonalities and equivalences between all the claimed peptide species and disease conditions. If the restriction is not withdrawn, rejoinder practice is requested wherein the Patent Office must *sua sponte* draw the claims back into examination.

For all these reasons, the Restriction is respectfully requested withdrawn. If the Examiner has any questions or wishes to discuss the matter, the Examiner is welcomed to telephone the undersigned attorney.

Respectfully submitted,

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